only obligations imposed upon the auditor by this enumera-
tion "statute."

In my opinion, this enumeration statute imposes no duty
upon the Auditor of State until after he has received the com-
plete returns of the enumeration. Therefore, not having re-
ceived a complete return, the time has not arrived for you, as
Auditor of State, to advertise the results and prepare tabula-
tions and maps and the other duties set out in said statute.

Section 65-616, Burns, makes the non-performance of the
requirements of the Act a criminal offense. In my opinion
this is a matter for the respective prosecuting attorneys of
the state and there is no obligation on the part of the State
Auditor to have this section complied with.

OFFICIAL OPINION NO. 8
February 21, 1950.

Honorable Charles F. Fleming,
Secretary of State,
State of Indiana,
State House,
Indianapolis, Indiana.

Dear Sir:

I have your letter requesting an official opinion from this
office which reads as follows:

"Your official opinion is hereby requested with refer-
ence to the following questions:

"1. Are the words 'Forms prescribed by the Secre-
tary of State' as used throughout the Indiana General
Corporation Act, as amended, in connection with docu-
ments submitted to, approved by and filed with the
Secretary of State in a certification of corporate acts
and proceedings, to be construed as requiring the Sec-
retary of State to promulgate written forms upon which
corporate documents must be prepared, or, to be con-
strued to promulgate written forms which may be used
as guides for draftsmanship, but upon which such docu-
ments need not be prepared and submitted?"
1950 O. A. G.

"2. My office is now preparing and printing the following:

(a) Forms as prescribed pursuant to the provisions of the Indiana General Corporation Act, which forms are the subject matter of questions number one herein.

(b) The printing of a booklet containing the Indiana General Corporation Act as amended by the Acts of 1949, and general enactments of the State of Indiana relating to business corporations, together with footnotes to such enactments.

(c) Pamphlets or booklets containing a specimen copy of each form prescribed by the Secretary of State for use under the Indiana General Corporation Act together with general and special instructions prepared by the Secretary of State with reference to the use of each form and compliance with the Act.

(d) A pamphlet copy or booklet containing laws or general enactments of the State of Indiana relating to corporations not for profit, together with footnotes in connection with such enactments.

"Must 'An Act providing for the adopting, making, approving, filing and publishing of rules and regulations made or adopted by any office, division, bureau, board, commission or agency of the State of Indiana, repealing all laws in conflict therewith and invalidating certain rules previously adopted and declaring an emergency.' (Acts 1945, Ch. 120; Burns Ind. Stat. Ann. 1933, Secs. 60-1501 to 60-1511, both inclusive; 1943 Repl., Pocket Supp.) be complied with prior to the printing and distribution of the aforesaid forms and pamphlets or booklets by this office?"

In order to determine your first question it is necessary to consider the Indiana General Corporation Act, Chapter 215 of the Acts of 1929 as amended, Burns 25-101 et seq. Throughout the Act I find many references to corporate documents which must be prepared "in the form prescribed by the Sec-
retary of State.” For example Burns 25-216 in reference to Articles of Incorporation; 25-225 in reference to the Amendments of the Articles of Incorporation and 25-246 in reference to Articles of Acceptance. There are other similar provisions in the Act pertaining to domestic corporations and also in the portion of the Act concerning foreign corporations. However I find two exceptions to this style of reference to the forms to be used and they are Burns 25-244 and 25-307 which pertain to the filing of annual reports by domestic corporations and foreign corporations, respectively. The language used in these two Sections is “on such forms as shall be prescribed and furnished by the Secretary of State.”

In considering the Corporation Act as a whole, in order to arrive at the intent of the legislature in the use of language (Kryder v. State, (1938), 214 Ind. 419), it is apparent that the legislature intended to make a distinction between these two particular types of reports and the remainder of the reports and documents to be filed.

This distinction is also noted in 25-402 of the Act which reads as follows:

“The secretary of state shall possess and have all necessary powers, and shall perform all the duties, which may be required for the proper and efficient administration of the provisions of this act.

“The secretary of state shall prescribe all forms necessary for the articles, certificates, statements, applications, reports, and all other papers, required by this act to be filed in his office, and shall, upon application, furnish to any corporation, domestic and foreign, blanks for the annual report of such corporation in the prescribed form.” (Our emphasis).

With the exception of the blanks for the annual reports the Secretary of State is only charged with the duty of prescribing a form, but in respect to the annual reports he must prescribe and furnish the same and the reports must be made on such form. It is a settled rule of construction that the language of a statute will be accepted in its ordinary and usual meaning.

Zoercher et al. v. Indiana Associated Telephone Corporation (1936), 211 Ind. 447.
It is therefore my opinion, in answer to your first question, that with the exception of the annual report forms the forms otherwise prescribed by the Secretary of State may be used as guides for draftsmanship and that it is not mandatory to prepare and submit such documents on the actual blanks which may be furnished by the Secretary of State.

In your second question you refer to Chapter 120 of the Acts of 1945, Burns 60-1501, et seq. This Act provides a uniform method for the adoption of rules and regulations by State Officers and agencies. In Paragraph 2 and 3 of Section 2 of this Act, the word "rule" is defined as follows:

"The word 'rule' means any rule, regulation, standards, classification, procedure, or requirement of any agency, designed to have or having the effect of law or interpreting, supplementing or implementing any statute, but does not include resolutions or directions of any agency relating solely to internal policy, internal agency organization or internal procedure which do not have the force of law and does not include 'administrative adjudication.'

"'Administrative adjudication' means the administrative investigation, hearing and determination by any agency of issues or cases applicable to particular parties." (Our emphasis).

If the prescription of forms as contemplated under the Corporation Act constitutes the adopting of "rules and regulations" then Chapter 120 above referred to must be complied with in order for them to be valid.

Again we must refer to the General Corporation Act as a whole in order to determine what the Secretary of State is doing by his acts in "prescribing forms". In so examining the Act I find that all of the more important documents and papers to be filed with the Secretary of State have been rather rigidly controlled by the legislature as to what they must contain. For example I refer you to Burns 25-216 concerning the Articles of Incorporation, 25-225 concerning the Amendment of Articles and 25-244 concerning annual reports. These provisions are also found in the portion of the Act dealing with foreign corporations. The legislature then has already prescribed the actual matters and items that must be reported.
and filed with the Secretary of State. To these statutory requirements the Secretary of State can neither add to nor eliminate. The prescription of forms is entirely within the discretion of the Secretary of State and he is given the express power by the statute. However it appears that what he is doing actually is determining as a matter of internal procedure the particular style in which he desires to have those matters prescribed to his office.

The word "form" is defined in Webster's Dictionary as, "the shape and structure of anything as distinguished from the material of which it is composed; particular or distinctive disposition or arrangement of matter."

Although it is not in itself determinative of the legal interpretation of Chapter 120, I feel it is exceedingly pertinent to point out that it is a 1945 act. I also wish to point out that almost every Board, Agency, Commission and Department of the Administrative Government of the State has the legal authority in their various statutes to "prescribe forms" to be used in the functions of their office and in carrying out of their duties under their respective statutes. These various agencies have prescribed numerous and varied forms, to be used. To mention a few, in addition to your office and the Bureau of Motor Vehicles, I call your attention to The Board of Accounts, The Insurance Department, The Department of Financial Institutions, The Industrial Board, and The Medical Board. I have been unable to find any form prescribed by any State Agency or officer since the passage of the above mentioned Act that have been "prescribed" as a rule or regulation under said Act. This administrative interpretation, although not controlling is entitled to great weight in consideration of this problem.

Commissioners v. Bunting (1887), 111 Ind. 143; Zoercher v. Ind. Associated Telephone Corp (1936), 211 Ind. 477.

Upon the above authority and reasoning, it is my opinion in answer to your second question that the forms and matters outlined in your letter as might be prescribed by the Secretary of State pursuant to the General Corporation Act are not "rules" within the meaning of Chapter 120 of the Acts of
1945 and that Act need not be followed in the adoption of the same.

OFFICIAL OPINION NO. 9

February 10, 1950.

Hon. George W. Long, Judge,
Ninth Judicial Circuit,
Columbus, Indiana.

Dear Sir:

I have your letter of October 17, 1949, which asks my opinion on the following question:

"Does a county have a legal enforceable claim against a Judge to recover back the per diem payment paid by the county to a Judge from April 1, 1945 to April 1, 1947, under Ch. 295 of the Acts of 1945 of the General Assembly of the State of Indiana."

The pertinent parts of Chapter 295 are as follows:

"Whereas, the 1933 fee and salary bill fixed fees and salaries at a time of world-wide depression; and

"Whereas, since that time the United States Supreme Court has decided that salaries of officers and employees of political subdivisions of the state are subject to Federal income taxes which have progressively increased; and

"Whereas, since 1933 the legislature has created the Indiana Welfare Department which today spends thirty millions of tax dollars and a great share of the work of collecting this money and administering its expenditure falls upon the county officials and for this additional burden no extra compensation has been granted; and

"Whereas, in numerous counties over the State of Indiana there are located defense plants, army camps, proving grounds, air bases or shipyards and these war projects employ thousands of workers; and